

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 8th day of September, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Qemal Xharo,
Petitioner,

-v.-

No. 04-4006-ag
NAC

Alberto R. Gonzales,¹
Respondent.

FOR PETITIONER: Parker Waggaman, New York, New York.

FOR RESPONDENT: Michael J. Sullivan, United States Attorney for the District of
Massachusetts, Michael Sady, Assistant United States Attorney,
Boston, Massachusetts.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as a respondent in this case.

1 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the
2 petition for review is DENIED.

3 Petitioner Qemal Xharo, a native and citizen of Albania, seeks review of a July 1, 2004
4 order of the BIA affirming the April 3, 2003 decision of Immigration Judge (“IJ”) Jeffrey S.
5 Chase denying petitioner’s application for asylum, withholding of removal, and relief under the
6 Convention Against Torture (“CAT”). *In re Qemal Xharo*, No. A 79 206 053 (B.I.A. July 1,
7 2004), *aff’g* No. A 79 206 053 (Immig. Ct. N.Y. City Apr. 3, 2003). We assume the parties’
8 familiarity with the underlying facts and procedural history.

9 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8
10 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency determination. *See,*
11 *e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*, 362
12 F.3d 155, 158 (2d Cir. 2004).

13 We lack jurisdiction to review petitioner’s arguments that the IJ did not conduct a fair
14 hearing and his challenge to the adverse credibility finding because these arguments have not
15 been exhausted at the administrative level. *See* 8 U.S.C. § 1252(d)(1); *see generally Gill v. INS*,
16 420 F.3d 82, 86 (2d Cir. 2005) (explaining that, in the absence of manifest injustice, petitioners
17 must administratively exhaust the categories of relief they are claiming and the individual issues
18 on which that relief may turn, but not subsidiary legal arguments).

19 Furthermore, because the petitioner has failed to sufficiently argue withholding and CAT
20 before this Court, we deem any such arguments waived. *See Yueqing Zhang v. Gonzales*, 426
21 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005). Additionally, we lack jurisdiction to review these
22 arguments because they have not been exhausted at the administrative level. *See* 8 U.S.C. §

1 1252(d)(1); *see generally Gill*, 420 F.3d at 86.

2 Having completed our review, any stay of removal that the Court previously granted in
3 this petition is VACATED, and any pending motion for a stay of removal in this petition is
4 DENIED as moot. Any pending request for oral argument in this petition is DENIED in
5 accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule
6 34(d)(1).

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8 FOR THE COURT:
9 Roseann B. MacKechnie, Clerk
10
11

12 By: _____